



**THE REPUBLIC OF KENYA**

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**THE NATIONAL YOUTH SERVICE (MISSING OFFICERS) REGULATIONS**

NO. 11 OF 2021

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Kenya

National Youth Service Act

## The National Youth Service (Missing Officers) Regulations Legal Notice 11 of 2021

Legislation as at 31 December 2022

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**NATIONAL YOUTH SERVICE ACT**  
**THE NATIONAL YOUTH SERVICE**  
**(MISSING OFFICERS) REGULATIONS**  
**LEGAL NOTICE 11 OF 2021**

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**Part I – PRELIMINARY**

**1. Citation**

These Regulations may be cited as the National Youth Service (Missing Officers) Regulations.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

"Act" means the National Youth Service Act ([Cap. 208](#));

"Board" means the Board of Inquiry convened by the Director-General or an officer authorized by the Director-General for the purposes of conducting an inquiry under section 60 of the Act;

"commanding officer" means the administrative head of a unit in the Service;

"convening Authority" means the Director-General or an officer acting under the delegated authority of the Director-General.

**3. Application**

- (1) These Regulations shall apply to an officer in active service who has been captured or becomes involuntarily absent in the course of operations of the Service in circumstances not constituting an offence under the Act.
- (2) For purposes of these Regulations, "in active service" means an officer engaged in routine duty, active Service duty and training in the Service.

**Part II – ASSESSMENT**

**4. Preliminary assessment and recommendation by Commanding Officer**

- (1) Upon receiving information that the whereabouts and status of an officer is uncertain and that the absence of the officer may be involuntary, the commanding officer or an authorized officer shall make a preliminary assessment of the circumstances.
- (2) If, as a result of that assessment, the commanding officer concludes that the officer is missing, the commanding officer shall—
  - (a) recommend that the officer be placed in a missing status; and
  - (b) not later than forty-eight hours after receiving such information, transmit a report containing the recommendation to the Director-General.

- (3) Subject to paragraph (1), a commanding officer making a preliminary assessment shall safeguard and forward for official use any information relating to the whereabouts and status of the missing officer that results from the preliminary assessment or from actions taken to locate the missing officer.

#### **5. Board of Inquiry into the whereabouts and status of missing officer**

- (1) Upon receiving a recommendation under regulation 4(2)(b), the Director-General shall review the recommendation and, not later than twenty-one days after receiving such recommendation, appoint a Board to conduct an inquiry into the whereabouts and status of the missing officer.
- (2) A Board appointed under paragraph (1) shall comprise five officers and shall—
  - (a) be chaired by an officer of a rank not lower than Chief-Inspector; and
  - (b) consist of at least one officer who has experience and understanding of operations or activities similar to the operation or activity in which the missing officer may have disappeared.
- (3) Any officer appointed as a member of the Board under these Regulations shall have the requisite security clearance that affords the officer access to all information relating to the whereabouts and status of the missing officer covered by the inquiry.

#### **6. Duties of the Board of Inquiry into the whereabouts and status of a missing officer**

A Board appointed to conduct an inquiry into the whereabouts and status of a missing officer shall—

- (a) collect, investigate and develop all facts and evidence relating to the disappearance or whereabouts and status of the missing officer;
- (b) collect appropriate documentation of the facts and evidence covered by its investigation;
- (c) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the missing officer; and
- (d) with respect to each missing officer who was subject to the inquiry, recommend to the Director-General that the missing officer either be placed in a missing status, be declared to have deserted or be presumed dead.

#### **7. Board of Inquiry proceedings relating whereabouts and status of a missing officer**

During the proceedings of an inquiry relating to the whereabouts and status of a missing officer, a Board shall—

- (a) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information, whether classified or unclassified, relating to the whereabouts and status of the missing officer covered by the inquiry;
- (b) gather information relating to actions taken to find the missing officer, including any evidence of the whereabouts and status of the missing officer arising from such actions; and
- (c) maintain a record of its proceedings.

#### **8. Access to Board of inquiry proceedings**

- (1) The proceedings of a Board during an inquiry regarding a missing officer under these Regulations shall be closed to the public.
- (2) The Board, with the authority of the Director-General, may make exceptions for the next of kin and immediate family members to attend the proceedings.

## 9. Report of the Board of inquiry

- (1) A Board appointed under these Regulations shall, not later than thirty days after the date of the appointment of the Board, submit a report with its findings and opinion on the inquiry to the Director-General.
- (2) The report shall include—
  - (a) a discussion of the facts and evidence considered by the Board in the inquiry;
  - (b) disclosure of whether classified documents and information were reviewed by the Board or were otherwise used by the Board in forming recommendations under paragraph (2)(d);
  - (c) a classified annexure which may contain information and documentation that requires security protection; and
  - (d) the recommendation of the Board pursuant to regulation 7(1)(d) with respect to the missing officer.

## 10. Findings of the Board of inquiry

The findings and opinion of the Board in original form shall be forwarded to the Director-General who may

- (a) where the findings reveal that the officer is deemed missing under circumstances arising out of an offence against discipline, direct that efforts be made to recover or apprehend the officer with a view to take appropriate disciplinary action;
- (b) where the findings raise a presumption of death beyond reasonable doubt in respect of the missing officer, issue a death certificate; or
- (c) where the findings do not establish the fact in either (a) or (b) above, declare the person missing.

## 11. Determination by the Director General

- (1) The Director-General shall, within fourteen days of receiving a report from the Board under regulation 10, review the report.
- (2) The Director-General shall, when reviewing the report, determine whether or not the report is complete and free of administrative error.
- (3) If the Director-General determines that the report is incomplete, or that the report is not free of administrative error, the Director-General may return the report to the Board for further action by the Board.
- (4) Upon a determination by the Director-General that a report reviewed under this Part is complete and free of administrative error, the convening Authority shall make a determination concerning the status of the missing officer, including whether the missing officer shall be—
  - (a) declared to be missing;
  - (b) declared to have deserted; or
  - (c) presumed dead.

## 12. Treatment of Determination

Any determination of the status of a missing officer under regulation 11 shall be treated as the determination of the status of the missing officer by all State organs, Ministries, Departments and Agencies of the Republic.

**13. Return alive of person declared missing or presumed dead**

- (1) Any officer declared to be missing or presumed dead and who is found alive and returns to the control of the Service shall be paid for the full time of their absence while given missing status or presumed dead.
- (2) The Director-General shall issue a certificate of return to an officer who is found alive.

**14. Limitation of power of court**

Nothing in these Regulations shall be construed to invalidate or limit the power of any court to presume a person dead in accordance with the Evidence Act ([Cap. 80](#)).